Valley Material Company *and* Larry Sweet. Case 14–CA–23118

March 10, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On December 14, 1994, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Valley Material Company, Valley Park, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employees not to engage in union activities.

(b) Telling an employee he is being discharged for engaging in union activities.

(c) Telling an employee he is being suspended for engaging in union activities.

(d) Giving an employee a final warning for engaging in union activities.

(e) Discharging and subsequently suspending its employee for engaging in union activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make its employee, Larry Sweet, whole for any loss of earnings, seniority, and all other benefits sustained by reason of his unlawful discharge and suspension, he having been reinstated, with interest thereon and in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge, suspension, and final warning of Larry Sweet, and notify the employee in writing that this has been done and that the Respondent will not use the discharge, suspension, or final warning against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Valley Park, Missouri, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] We have modified the judge's recommended Order and notice to include a narrow injunctive provision, the standard expunction provision, and the standard provision requiring the Respondent to notify the Regional Director of its compliance with the Board's Order.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell our employees not to engage in union activities.

WE WILL NOT tell our employees they are being discharged because they engaged in union activities.

WE WILL NOT tell our employees they are being suspended and given a final warning because they engaged in union activities.

WE WILL NOT discharge or suspend our employees because they engage in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employee, Larry Sweet, whole for any loss of earnings or other benefits he may have sustained by reason of our action against him, he having been reinstated to his former position, and WE WILL notify him that we have removed from our files any reference to his discharge, suspension, and final warning and that we will not use the discharge, suspension, and final warning against him in any way.

VALLEY MATERIAL COMPANY

Lucinda Flynn, Esq.,[1] for the General Counsel.
Robert Vinning Jr., Esq., of Clayton, Missouri, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. This case was tried before me at St. Louis, Missouri, on September 14, 1994,[2] upon a complaint and notice of hearing issued by the Regional Director for Region 14 (St. Louis, Missouri) pursuant to the National Labor Relations Act (the Act) alleging that Valley Material Company (the Respondent or Employer) had engaged in conduct in violation of Section 8(a)(1) and (3) of the Act. The conduct the Respondent is alleged to have engaged in is to wit: Respondent's president, Robert Halamicek, on or about May 17, told an employee not to engage in union activities and on the same date told an employee he was being discharged for engaging in union activities, and by letter dated June 13, told an employee he had been suspended and was being given a final warning for engaging in union activities, all in violation of Section 8(a)(1) of the Act. The complaint further alleges that Respondent violated Section 8(a)(1) and (3) of the Act by discharging its employee Larry Sweet about May 17 and suspending the same employee about June 13.

This complaint arises out of a charge filed July 13 by Larry Sweet, an individual, and amended on August 8.

The Respondent's duly filed answer to the complaint admits all procedural allegations of the complaint, including the Board's jurisdiction, but denies that it has violated the Act as alleged.

In its answer to the complaint, the Respondent did not raise as an affirmative defense its contention that the Board should exercise its discretion and defer to a settlement agreement reached by the Union and the Respondent pursuant to the grievance procedure in the collective-bargaining agreement in effect between the parties under the deferral principles of *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), as further expounded in *Alpha Beta Co*., 273 NLRB 1546 (1985). Neither was this contention directly raised or litigated at trial. Respondent argues it for the first time in posttrial brief.

A grievance was filed by the Charging Party concerning his discharge. At some point after the first step meeting, the Union and the Employer reached an agreement which resulted in the grievant being reinstated to his position. However, as more fully set forth below, the settlement did not remedy the unfair labor practices and was repugnant to the Act. Accordingly, this case is not one proper for the Board to exercise its discretion to defer to the settlement agreement. The Union refused the grievant's request to take the issue to arbitration. I find that the Government has proven each and every allegation of the complaint and the Respondent shall be ordered to remedy these violations.

All parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and General Counsel filed briefs. Upon consideration of the entire record and the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Valley Material Company is a Missouri corporation with an office and place of business at Valley Park, Missouri (Respondent's facility or plant), and is engaged in the nonretail sale of ready-mix concrete. During the 12-month period ending June 30, 1994, Respondent, in conducting its business operations described above, purchased and received at its Valley Park, Missouri facility goods valued in excess of $50,000 directly from other enterprises located within the State of Missouri, each of which other enterprises had received these goods directly from points outside the State of Missouri. The complaint alleges, the Respondent admits, the evidence establishes, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, the Respondent admits, the evidence establishes, and I find that at all material times Construction, Building Material, Ice and Coal, Laundry and Dry Cleaning, Meat and Food Products Drivers, Helpers, Warehousemen, Yardmen, Salesmen and Allied Workers, Local Union No. 682, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts as Found*

The relevant facts here are not in dispute. The Respondent is a member of the St. Louis Material Dealers Association, a multiemployer group that has a collective-bargaining agreement with the Union. The most recent agreement, to which Respondent is a signatory, was executed in March.

According to the testimony of William Ferris, business representative for the Union, which is not disputed, it is customary for each company whose employees are represented by the Union, to elect stewards immediately upon completion of negotiations for a new contract. The steward's ballots are made available at the time the contract is ratified and is only given to the employees in a unit which requests that a new steward's election be conducted. At the meeting held for the drivers employed by the Association to ratify the agreement in March, Tom Stengel, Respondent's steward at the time, requested a steward's ballot sheet. Ferris provided Stengel

[1] Herein called the General Counsel or the Government.
[2] All dates herein are 1994 unless otherwise indicated.

with the sheet, which he received back in the mail a couple of weeks later resulting in Stengel's reelection.

Larry Sweet (the Charging Party) has been employed by Respondent for approximately 8-1/2 years. He testified that Stengel approached him about April 28, at which time Stengel asked him if he wanted to run for the steward's position. Sweet answered in the affirmative and signed the sheet in the appropriate place, indicating that he was a candidate. Sweet testified that he called Ferris about May 5, expressing his reservations about the conduct of the election. During that conversation Ferris informed him that the election was completed and Stengel had been reelected.

At the time Stengel asked Sweet if he wanted to be a candidate for steward and Sweet placed his name on the ballot sheet as a candidate (R. Exh. 2), Sweet asked Stengel if he, Sweet, could carry the ballot sheet to the drivers so they could vote. Stengel refused, saying that he would take it to the drivers. Sweet objected to no avail.

When advised by Business Representative Ferris that Stengel had been reelected, Sweet expressed concern about the procedure that was used to select a steward, but Ferris stated that it was over and Stengel was steward. From the ensuing events, particularly Sweet's actions on May 17, it is clear Sweet was not satisfied that the election of the steward was at arms' length and fair.

On May 17, Sweet prepared a single sheet of paper labeled ''Election of Steward at Valley Material Company.'' Written in pen before that heading was ''Survey of.'' Below this heading was typed ''Listed below are the steward nominees. Indicate your vote by signing your name below the nominee of your choice. Your vote counts.'' (G.C. Exh. 2.) There were spaces for the names of three nominees, however, Larry Sweet was the only nominee listed. There were also 17 spaces for members to vote for each nominee. There were no signatures in these spaces. At the bottom of the single sheet of paper was handwritten ''These persons do not choose to participate.'' There were six names written under this heading.

Sweet's conduct and actions with this ''survey'' he had prepared is the conduct out of which these unfair labor practices arose. On May 17, Sweet, whose shift began at 7:15 a.m., arrived at the facility about 6 a.m. for the purpose of getting drivers arriving for work to sign the survey in the parking lot. The first person Sweet approached was steward Stengel, about 6 a.m. Sweet asked him if he wanted to participate in the survey about the election process. Stengel asked ''Who in the Union authorized it'' and Sweet replied that ''Nobody authorized it. I don't represent the Union.'' Stengel then asked if he had received permission from company owner Bob Halamicek to do the survey, to which Sweet replied that he had not. Stengel then told Sweet the election was over ''and that he was going to get me.'' (Tr. 16–18.) Stengel then walked toward Halamicek's office. Stengel did not testify.

Sweet testified that he had the ''survey'' in an envelope and talked to several drivers in the parking lot, none of whom wished to participate. These drivers are apparently the six names on the survey from that indicates they did not wish to participate.

Before Sweet's ''clock in'' time, he asked owner Bob Halamicek if he could clock in at 9 o'clock that morning, stating that he had some business to take care of. Halamicek told him they were busy and to start at his regular time and added that ''he didn't want any illegal union activities going on.'' (Tr. 19.) Sweet proceeded to the drivers' room and prior to clocking in talked to a couple of other drivers about the ''survey'' before they clocked in.

The drivers' room was described as the place drivers clocked in and ate lunch. The room has a table or counter, bulletin boards, and ''anything from magazines to insurance information. 'I have seen ballots there, I mean campaign literature from previous BLE elections!''' Sweet testified that before he clocked in he left the survey on the counter so that drivers could look at it and decide if they wanted to sign. He then reported to work and made his first delivery.

Upon returning to the plant, shortly before 9 a.m., he was summoned on his radio by dispatcher Herb Holloway to report to the office. When he arrived at the office he found present there, President and owner Bob Halamicek, dispatcher Holloway, steward Stengel, and Jimmy Halamicek, son of Bob, who was also a supervisor. Sweet asked ''what was up?'' Bob Halamicek handed him a piece of paper and asked what it was. The sheet of paper was the ''Survey'' left on the counter in the drivers' room earlier by Sweet. (G.C. Exh. 2.) Sweet identified it as such and Halamicek told him he was ''discharged for illegal union activity.'' Sweet told them he did not believe his activity was illegal, but Halamicek reiterated that he was discharged for that reason.

Before leaving the plant, Sweet requested and received from steward Stengel a grievance form. He completed it stating in relevant part ''fired for illegal union activity. I request reinstatement.'' (G.C. Exh. 3.) He returned it to steward Stengel and left the premises. There was a grievance meeting on May 23, 6 days later, at which there was no resolution of the grievance. It appears that present for that meeting in addition to Sweet, was Bob Halamicek, Union Business Representative William Ferris, and steward Stengel. Lois Halamicek, wife of Bob and office manager, may have also been present.

There was no resolution of the grievance. There was also little testimony concerning what was said by whom, to whom, with respect to the party's respective positions on the grievance. It appears that the Union merely argued that Sweet's conduct here should not be a dischargeable offense. Halamicek remained adamant and Sweet remained discharged.

Under the effective collective-bargaining agreement (R. Exh. 1) after this step there is no second step provision. However, the Union and the Company may continue to informally negotiate concerning the next formalized step in arbitration. Under article VII, section 3, either the Union or the Company may demand arbitration. Arbitrations are selected under provisions there spelled out.

Sweet requested the union officials to take his grievance to arbitration pursuant to article VIII ''Grievance procedure'' and article IX ''Discharge cases,'' of the collective-bargaining agreement. The Union declined. Sweet apparently continued to pursue his grievance through Business Agent Ferris and Local Secretary/Treasurer Dave Gallagher. About June 17, Sweet received a registered letter dated June 13, from Bob Halamicek, which in effect reduced the discharge to a suspension, and advised Sweet to report to work at 9 a.m. June 20, unless notified otherwise. (G.C. Exh. 4.) The letter reads:

June 13, 1994

Mr. Sweet,

Your suspension from work, for unauthorized union activities, will end June 19, 1994. You are to report to work at 9:00 a.m., June 20, 1994, unless notified otherwise.

Your reinstatement will be upon the following conditions of no back pay, no benefits to Local 682 Health & Welfare, no contributions to Central States Pension Fund and no other type of reimbursement during your suspension.

No checks that you have received will be reissued under any circumstance. I am enclosing your time card for the check you think is wrong. I see no discrepancies, you checked in and you checked out on the days worked.[3]

Mr. Sweet this is your final warning. Should you do anything while employed by Valley Material Company that management deems inappropriate, you will be terminated.

/s/Robert E. Halamicek
Robert E. Halamicek,
President

cc: Mr. Tom Stengel—Steward
Mr. Bill Ferris—Local 682

After receipt of this letter, Sweet continued to protest to Ferris, Gallagher, and Local President Paul Renaud and request that they take the grievance to arbitration to recover the loss of wages and other benefits during the time of his suspension. They continued to refuse to arbitrate.

Unless otherwise indicated the foregoing review of the facts is based on the credited and uncontradicted testimony of Larry Sweet. Teamsters Local 682 Business Agent and Recording Secretary William Ferris was called by, and testified on behalf of the Respondent. The steward's election sheet (R. Exh. 2) was received by Ferris, probably from Stengel, sometime prior to May 17. It showed 11 votes for Stengel and none for Sweet. Prior to May 17, Sweet went to Ferris' office and orally protested the election. Ferris told Sweet all the ''guys'' had signed under Stengel's name and he saw no reason to hold another election.

Ferris testified that he made arrangements for what is called a ''local'' meeting, first step meeting, on May 23. Present were Ferris, Halamicek, Stengel, and Sweet. Each side pled their case and Halamicek said ''no way he was taking Larry back.'' Ferris stated that thereafter he had several conversations with the ''company'' including one with Respondent's attorney, Vinning. Afterwards he talked with Lois Halamicek, wife of Bob, and told her he understood she was unhappy about what was going on, and that he, Ferris, did not feel like it was a dischargable offense. He testified that shortly thereafter L. Halamicek talked with Local 682 President Paul Renaud at which time it was agreed to put Sweet back to work with no backpay or benefits for the time off. The Union acquiesced in this action and refused Sweet's further requests to arbitrate.

[3] A timecard of Sweet attached to this letter has no relevance to this case.

Robert Halamicek testified that it was brought to his attention on the morning of May 17, that General Counsel's Exhibit 2 was posted on the wall of the drivers' room beside the timeclock, with either a thumbtack or tape, but admits he doesn't know how it got there. Halamicek testified that General Counsel's Exhibit 2 was brought to him by the steward. He testified that some of the employees who declined to participate in Sweet's survey must have been working when Sweet solicited them. There is no evidence that Respondent maintained any rule with respect to solicitation and distribution. Halamicek testified that he viewed Sweet's conduct as unauthorized union activity under article XVII of the collective-bargaining agreement. The application of article XVII to Sweet's conduct here will be considered infra. Halamicek admitted that at the time he discharged Sweet for ''unauthorized'' union activity that he did not know whether the Union had authorized Sweet's actions. Halamicek never told Sweet verbally or in writing that his disruption of the drivers' work was a factor in Respondent's decision to discharge him. In fact there is not a scintilla of evidence that Sweet's activities did disrupt or in any way interfere with the drivers' work.

B. *Analysis*

The Respondent contends that Sweet's discharge, subsequently reduced to an approximate 30-day suspension without pay and benefits, is not a violation of the Act because the conduct engaged in by Sweet was in violation of article XVII of the collective-bargaining agreement entitled unauthorized activity.[4] The Union, Local 682, evidently agreed, or at least acquiesced, in Respondent's interpretation of article XVII. It is evident it refers to unauthorized work stoppages and strikes and spills out how the Union can avoid financial responsibility for such activity. These provisions are common in collective-bargaining agreements.

The only testimony in this record is that of Sweet who testified without contradiction by any one that the only drivers he talked with, including steward Stengel, who threatened to ''get him,'' and did, for that activity, was in the parking lot prior to either he or the other drivers clocking in. He also

[4] This article reads:

ARTICLE XVII—UNAUTHORIZED ACTIVITY

It is understood and agreed that the Union shall have no financial liability for acts of its members or agents which are unauthorized and which the Union cannot control. It is agreed, however, that in the event of any such unauthorized action, the Union shall, upon receiving notice thereof, urge its members to return to work, if there should be a work stoppage, and just as soon as practical address a letter to the company notifying the company that the action of the union members or agents is unauthorized.

The Company shall retain the right to discipline employees responsible for such unauthorized activities without violation of the terms of this agreement.

In order that the Company may be apprised of the officer of the Union empowered to authorized strikes, work stoppages, or actions which will interfere with activities required of employees under this agreement, it is understood and agreed that only the top administrative officers of the local union has the power or authority to authorize any such actions or give the orders or directions necessary to carry out any such notice. The Union shall notify the Employer in writing as to the name of its top administrative officer.

testified that he talked with two other drivers in the drivers' room prior to either clocking in for work. No witnesses were called to refute this. Halamicek's conjecture that since some of the drivers Sweet talked with were scheduled to start work before Sweet's starting time, is just that, pure conjecture and does not constitute a basis for finding that Sweet interfered with, or interrupted the drivers' work. The General Counsel correctly argues that Halamicek's telling Sweet that ''he didn't want any illegal union activities going on,'' on May 17, when he denied Sweet's request to clock in at 9 a.m., violates Section 8(a)(1) of the Act. See *Kroger Co*., 311 NLRB 1187, 1183 (1993), where the Board held the statement to employees that they should break up an ''unauthorized'' union meeting to be unlawful in as much as it discourages union activities.

With respect to Sweet's discharge, which occurred about 2 hours later, the testimony is not in dispute that he was told that he was discharged for engaging in ''illegal union activities.'' Halamicek stated that he thought, he could discharge Sweet for this activity under article XVII of the collective-bargaining agreement. However, he did not tell Sweet that he was being discharged pursuant to article XVII or any other contract provision. Nor does any reference to this contract provision appear in the grievance settlement letter which states only that Sweet had been suspended for engaging in ''unauthorized union activities,'' Halamicek states that at the time he discharged Sweet he did not know whether or not the Union had authorized this survey. I do not credit Halamicek here. The inference is almost inescapable that steward Stengel advised Halamicek that the Union had not authorized the ''survey'' at the time he told Halamicek of it and showed him the paper. (G.C. Exh. 2.)

Sweet was clearly engaging in union activities protected by Section 7 of the Act in attempting to change steward elections, regardless of whether the Union authorized such activities. In *Pacific Intermountain Express*, 215 NLRB 588 (1974), the Board found an 8(a)(3) and (1) violation where the Respondent had discharged an employee because of his opposition to the local business agent and his complaint to the International union about the lack of representation from the local business agent. The Board found that the employee was engaging protected union activity, even though the activity clearly was dissident in nature and had not been authorized by the Union. The Board has long held that it is a violation of Section 8(a)(1) of the Act to tell an employee that his union activities are the reason for his discipline. *Black Magic Resources*, 312 NLRB 667 (1993); *Kroger Co*., supra; *Aero Metal Forms*, 310 NLRB 397, 400 (1993); and *California Cooperative Creamery*, 290 NLRB 355, 359 (1988).

Accordingly, here Respondent violated Section 8(a)(3) and (1) of the Act by discharging Sweet on May 17, and it again violated Section 8(a)(1) by telling Sweet that his union activities were the reason for his discharge.

The General Counsel contends Respondent's June 13 letter to Sweet received by him about June 17, constitutes an additional 8(a)(1) violation. (G.C. Exh. 4.) As discussed more fully above, the letter, while converting the discharge to a suspension, reiterates that the discipline was for engaging in ''unauthorized'' union activities. The letter further states that it constitutes a final warning and should Sweet do anything that ''management deems inappropriate'' Sweet will be terminated. For the reasons stated above, I find the Respondent again violated Section 8(a)(1) and in as much as the issue was fully litigated, I find the issuance of a ''final warning'' for engaging in protected union activities violates Section 8(a)(3) and (1) of the Act.

I find that Respondent discharged and although subsequently converting the discharge to a suspension, violated Section 8(a)(1) and (3) of the Act. As noted above, there is not a scintilla of evidence, indeed not even a suggestion, that Sweet's activities on May 17, was disruptive of other employees' work. In fact the testimony is undisputed that all his activities at issue here occurred prior to any of the drivers' clocking in for work. The evidence is also abundant that the Employer had no rule, valid or otherwise, prohibiting employees discussing union matters during working time.

Respondent's Request for Deferral

The Respondent cites the Board's decision in *Alpha Beta Co.*, supra, where the Board announced its intention to apply the principles set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), to settlement agreements arising out of the collective-bargaining agreements. Assuming that in some cases the Board would defer to a settlement agreement reached by the Union and the Employer over the objection of the grievant, this is not a case appropriate for such deferral. The settlement agreement in no way addresses or remedies the unfair labor practices committed here. I agree with the General Counsel that the settlement itself may be violative of the Act inasmuch as it simply reduces the form of discipline from discharge to a 1-month suspension, with loss of all wages and benefits for that month, and a final warning. The settlement states the reason for the discipline was the employees' union activities.

In a case more recent than *Alpha Beta*, supra, *Cone Mills Corp*., 298 NLRB 661 (1990), the Board addressed the issue of whether it should defer to an arbitrator's award. The arbitrator concluded that the grievant was suspended and later discharged for insubordination, and thus for just cause. Id. at 666. The Board found, however, that there was no explanation for the discharge other the grievant's union activities, and the arbitrator's failure to order reinstatement with backpay was repugnant to the Act. Because it found the award to be repugnant and not susceptible to any interpretation consistent with the Act, the Board refused to defer to the arbitrator's award. Here, the grievance settlement of suspending and issuing a final warning to Sweet for his union activities is not consistent with the Act, and thus does not warrant deferral.

A further reason for not deferring to the grievance resolution, in addition to the fact that it is repugnant to the Act, is the hostility shown by the Union to the Charging Party. In *Kansas Meat Packers*, 198 NLRB 543 (1972), the Board refused to defer to the parties' grievance and arbitration procedure because of the hostility shown by the union to the charging party. There, the charging party, a steward, complained to the employer and to the business agent about safety hazards at the workplace, which resulted in friction between the union and the charging party. The charging party was thereafter discharged because of arguments between the charging party and the business agent. The union did nothing to investigate the circumstances of the discharge or file a grievance, and did not file unfair labor practice charges on behalf of the grievant. The Board concluded that under the

circumstances, particularly the apparent antagonism between the interests of the discriminatee, on the one hand, and both parties to the collective-bargaining contract therein, on the other, deferral to arbitration would be inappropriate where it would ''relegate the Charging Parties to an arbitrate process authored, administered, and invoked entirely by parties hostile to their interests.'' Id. at 544.

It is clear here that steward Stengel was extremely hostile to Sweet because he was challenging the election procedures for stewards. He threatened Sweet that he would ''get him'' and reported Sweet's activities in that regard to owner and President Halamicek. Moreover, the settlement of Sweet's grievance was reached without any input from Sweet. All the officials of Local 682 told Sweet his grievance ''was not winnable.'' In view of this hostility to the Charging Party by the officials of his collective-bargaining representative, the Board should not exercise its discretion and defer these unfair labor practices to the grievance procedure in the collective-bargaining agreement.

CONCLUSIONS OF LAW

1. Jurisdiction of the Board is properly asserted in this proceeding.

2. By engaging in the following conduct the Respondent has committed acts in violation of Section 8(a)(1) of the Act.

(a) Telling an employee not to engage in any union activities.

(b) Telling an employee that he was being discharged for engaging in union activity.

(c) Telling an employee that he was being suspended and given a final warning for engaging in union activities.

3. By engaging in the following conduct the Respondent has committed acts in violation of Section 8(a)(1) and (3) of the Act.

(a) Discharging its employee Larry Sweet because he engaged in union activities.

(b) Suspending its employee Larry Sweet for 1 month with loss of pay and all other benefits.

(c) Issuing a final warning to its employee Larry Sweet and telling him if he should do anything while employed by Respondent which Respondent deemed inappropriate, he would be discharged.

THE REMEDY

Having found the Respondent has committed acts in violation of Section 8(a)(1) and (3) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Such affirmative actions shall include the posting of the usual informational notice to employees, attached as appendix, and making its employee, Larry Sweet, whole for any lose of earnings, seniority, and any other benefits he may have sustained by reason of the unfair labor practice against him.

The Respondent having discriminatorily discharged an employee, must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[5]

[Recommended Order omitted from publication.]

[5] Under *New Horizons*, interest is computed at the ''short term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp*., 231 NLRB 651 (1977).